

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1994 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

AHMED JANMOHAMAD

Versus

JAIBUNNISA D/O ABDUL HAMID

Appearance:

MR SH SANJANWALA for Petitioner
MR PB MAJMUDAR for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/07/98

ORAL JUDGEMENT

This is tenant's revision under section 29(2) of the Bombay Rent Act.

The plaintiff-respondent filed suit for ejectment and recovery of arrears of rent and msene profits against the tenant revisionist mainly on the ground of disclaimer of title and ownership by the tenant.

Initially one room was in the tenancy of the revisionist but subsequently by force another room was occupied by the tenant-defendant. Due to intervention of some persons rent of two rooms was settled at Rs.16/- p.m. The dispute related to this accommodation consisting of two rooms. It was the case of the plaintiff-respondent that the tenant-revisionist not only denied the relationship of landlord and tenant between the parties but also on several occasions in the reply notice and also in the public notice published in local newspaper denied the title of the respondent and asserted his own title in the property. Consequently eviction was sought and decree for arrears of rent and mesne profits was also claimed.

The suit was resisted by the defendant-revisionist. Ultimately the suit was dismissed by the Trial Court. An appeal was preferred which was also dismissed. Hence this revision.

Mere denial of relationship of landlord and tenant between the parties does not necessarily amount to disclaimer of title of the landlord but here in this case the situation is altogether different. The revisionist not only denied the relationship of landlord and tenant between the parties but also disclaimed of the title of the land lady and further asserted his own title in the property. It seems from the judgment of the lower Court that contradictory stand was taken by the revisionist. In the witness box he stated that initially he took the premises on rent from Mariambibi and then failed to establish and disclose how he became owner though in reply notice he asserted that from the time of his forefathers extending 40 years he is the owner of the property and that too by adverse possession. It is surprising that this plea of adverse possession was raised but the ingredients of adverse possession were neither alleged nor proved. The finding of the two Courts below assailed is a concurrent finding of fact which is based on proper appreciation of evidence on record.

At first notice exhibit 20 was given by the plaintiff on 17.7.1976. Exhibit 23 is reply to this notice in which the defendant claimed to be owner of the premises for more than 40 years and also from the time of his forefathers. He denied title of the plaintiff. A public notice was published in 'Gujarat Mitra' on 9.9.1976 where also the revisionist made categorical disclaimer of the title of the landlady. Subsequently

another notice Exh.27 dated 15.9.1976 was replied in the same manner disclaiming the title of the plaintiff landlady. So is the case with another notice Exh.28 dated 14.10.1975. Last notice on which the suit was filed also met the same reply viz. categorical denial of title of the landlady.

From the above material on record, it is cogently established that the revisionist disclaimed and denied the title of the landlady and this was sufficient ground for passing decree for eviction. The decree for arrears of rent also requires no interference.

For the reasons given as above, I do not find any substance in this revision which is hereby dismissed. No order as to costs.

Sd/-
(D.C.Srivastava, J)

m.m.bhatt